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10 Attorneys for Plaintiffs and Counter-Defendants  
THE LARYNGEAL MASK COMPANY LTD.  
11 and LMA NORTH AMERICA, INC.

12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 \_\_\_\_\_  
15 THE LARYNGEAL MASK COMPANY  
LTD. and LMA NORTH AMERICA, INC.,

16 Plaintiffs,

17 v.

18 AMBU A/S, AMBU INC., and AMBU LTD.,

19 \_\_\_\_\_  
20 Defendants.

21 \_\_\_\_\_  
22 AMBU A/S, AMBU INC., and AMBU LTD.,

23 Counterclaimants,

24 v.

25 THE LARYNGEAL MASK COMPANY  
LTD., and LMA NORTH AMERICA, INC.,

26 \_\_\_\_\_  
27 Counter-Defendants.  
28 \_\_\_\_\_

Civil Action No. 07 CV 1988 DMS (NLS)

**DECLARATION OF JOSHUA J.  
STOWELL IN SUPPORT OF  
PLAINTIFFS' DAUBERT MOTION  
TO EXCLUDE TESTIMONY OF  
DEFENDANTS' DESIGNATED  
EXPERT WITNESS RYAN  
SULLIVAN, Ph.D.**

**Date: September 25, 2009**

**Time: 1:30 p.m.**

**Courtroom 10, 2<sup>nd</sup> Floor**

**Honorable Dana M. Sabraw**

**CONFIDENTIAL PORTIONS  
FILED UNDER SEAL**

1 I, Joshua J. Stowell, declare as follows:

2 I am a Partner in the law firm of Knobbe, Martens, Olson & Bear, LLP, co-counsel  
3 for Plaintiffs/Counter-defendants The Laryngeal Mask Company Ltd. and LMA North America,  
4 Inc. (collectively "LMA") in this action, and thus, I am familiar with the status of the case. I make  
5 this Declaration in support of Plaintiffs' Motion *in Limine* to Exclude the Expert Testimony of  
6 Ryan Sullivan. I make this Declaration based on my own personal knowledge unless indicated  
7 otherwise.

8 1. Attached as Exhibit 1 is a true and correct copy of the Report of Ryan Sullivan,  
9 Ph.D., executed June 19, 2009.

10 2. Attached as Exhibit 2 is a true and correct copy of the Rebuttal Expert Report of  
11 Creighton G. Hoffman Regarding Damages, executed July 10, 2009.

12 3. Attached as Exhibit 3 is a true and correct copy of charts containing Ambu and  
13 LMA market share and sales information.

14 4. Attached as Exhibit 4 is a true and correct copy of excerpts from the deposition  
15 transcript of Creighton G. Hoffman, dated August 5, 2009.

16 5. Attached as Exhibit 5 is a true and correct copy of the Rebuttal Report of Ryan  
17 Sullivan, Ph.D., executed July 10, 2009.

18 6. Attached as Exhibit 6 is a true and correct copy of the document titled Ambu LMA  
19 Forecast and Market Information produced under bates number AMBU006325.

20 7. Attached as Exhibit 7 is a true and correct copy of Ambu benchmarking analysis  
21 documents produced under bates range AMBU247475-AMBU247480.

22 8. Attached as Exhibit 8 is a true and correct copy of excerpts from the deposition  
23 transcript of John Schmitz, dated June 3, 2009.

24 9. Attached as Exhibit 9 is a true and correct copy of Plaintiffs' Supplemental  
25 Objections and Responses to Defendants' Second Set of Interrogatories, served and signed May 6,  
26 2009.

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1           10.     Attached as Exhibit 10 is a true and correct copy of an email chain ending in an  
2 email from Brett Jones to Tina Hill sent on August 13, 2008 and produced under bates range  
3 LMA00094770-LMA00094772.

4           11.     Attached as Exhibit 11 is a true and correct copy of a report from Bruce Kaplan,  
5 LMA Sales Person, dated January 2005 and produced under bates range LMA00100037-  
6 LMA00100040.

7           12.     Attached as Exhibit 12 is a true and correct copy of an LMA 20/20 Program Report  
8 produced under bates range LMA00006866-LMA00006868.

9           13.     Attached as Exhibit 13 is a true and correct copy of a document entitled LMA's  
10 20/20 Program – Ambu Updated!" dated September 27, 2005 and produced under bates range  
11 LMA00054611-LMA00054613.

12           14.     Attached as Exhibit 14 is a true and correct copy of a letter from Walter Knoll, MD,  
13 dated July 9, 2007 and produced under bates range LMA00115602.

14           15.     Attached as Exhibit 15 is a true and correct copy of the Eastern Division Recovered  
15 Account List produced under bates range LMA0045886-LMA0045887.

16           16.     Attached as Exhibit 16 is a true and correct copy of excerpts from the deposition  
17 transcript of Dr. David Z. Ferson, dated June 17, 2009.

18           17.     Attached as Exhibit 17 is a true and correct copy of an MD Anderson Cancer  
19 Center memorandum from Wanda Quezada to Natalie Scully, dated March 11, 2004 and produced  
20 under bates range MDA012-MDA014.

21           18.     Attached as Exhibit 18 is a true and correct copy of a poster entitled "Comparative  
22 Anatomical Study of Supraglottic Airways" and produced under bates number FPERSON0003.

23           19.     Attached as Exhibit 19 is a true and correct copy of "Chapter 7: Safety and Hazards  
24 Associated with Tracheal Intubation and Use of Supralaryngeal Airways" from the book  
25 *Complications in Anesthesiology*, edited in part by Nikolaus Gravenstein, M.D., published in 2008  
26 by Lippincott Williams & Wilkins, and produced under bates range LMA00006094-  
27 LMA00006112.

28     ///

20. Attached as Exhibit 20 is a true and correct copy of excerpts from the deposition transcript of Frank Homa, dated June 9, 2009.

I declare under penalty of perjury under the laws of the United States that the foregoing statements are true and correct.

Executed this 14th day of August, 2009 at Irvine, California.

/s/ Joshua J. Stowell  
Joshua J. Stowell

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 14, 2009, I caused the foregoing **DECLARATION IN**  
3 **SUPPORT OF PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE THE EXPERT**  
4 **TESTIMONY OF RYAN SULLIVAN** to be electronically filed with the Clerk of the Court  
5 using the CM/ECF system which will send electronic notification of such filing to the applicable  
6 registered filings users, including the counsel identified below:

7 Darryl M. Woo  
8 dwoo@fenwick.com  
9 Charlene Morrow  
10 cmorrow@fenwick.com  
11 C.J. Alice Chuang  
12 achuang@fenwick.com  
13 FENWICK & WEST LLP  
555 California Street, 12<sup>th</sup> Floor  
San Francisco CA 94104  
T: 415-875-2300  
F: 415-281-1350

14 I declare that I am employed in the office of a member of the bar of this Court at whose  
15 direction the service was made.

16 Dated: August 14, 2009

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18 \_\_\_\_\_  
19 Claire A. Stoneman  
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